



NORTH CAROLINA

State Board of Elections

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NUMBERED MEMO 2016-16

TO: County Boards of Elections
FROM: Kim Strach, Executive Director
RE: Voter Assistance
DATE: September 26, 2016

Voter Assistance

As we approach the 2016 General Election, please bear in mind the requirements for voters who receive assistance entering and exiting the voting booth and in preparing their ballots. (This Numbered Memo supersedes Numbered Memo 2012-27, while incorporating guidance that remains applicable.)

A script has been created for poll workers to use in conjunction with the station guide for the purpose of ensuring uniform statutory compliance regarding voter assistance. Poll workers should use the script when a voter requests assistance. By this uniform method, we will ensure that voters are afforded appropriate, rather than improper, assistance.

Federal law requires that when a federal contest is on the ballot, “any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.”¹ North Carolina law extends the federal provision to qualifying voters in all elections.² Therefore, the following guidance is issued to ensure the uniform application of federal and state law in early voting locations and precincts throughout North Carolina. Again, please note that the script for voter assistance at the end of this memorandum and as an attachment is provided to ensure that all precincts and one-stop early voting sites comply with these state and federal requirements.

Assistance from a Near Relative

Any voter is entitled to receive assistance from the voter's *near relative*, which G.S. § 163-166.8(a)(1) defines as the voter's spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, as chosen by the voter. The voter need not be disabled in order to receive assistance from his or her near relative, and elections officials should avoid prying or overly-probative questions regarding the voter's preference for assistance.

Assistance from a Person of the Voter's Choice

A voter in either of the following categories is entitled to assistance from a person of the voter's choice, excluding the voter's employer or agent of that employer or an officer or agent of the voter's union:

¹ 52 U.S.C. § 10508

² G.S. § 163-166.8(a)(2).

- A voter whose disability prevents him or her from entering the voting booth or marking a ballot without assistance; or
- A voter who, due to his or her inability to read, write, or speak in English, is unable to mark a ballot without assistance.³

Not all disabilities are immediately apparent, but a voter who requires assistance entering the voting booth or marking a ballot due to a mental disability is just as entitled to assistance as a voter whose disability may be easily seen.

Communication by the Voter

A qualified voter seeking assistance at the voting place must provide his or her current name and address and request permission to obtain assistance, stating the reasons.⁴ The requirement to state a reason for the assistance does not require the voter to provide details of the disability. Certain disabilities may affect voters' ability to vocalize their request, but federal law still provides that such a disabled voter is entitled to assistance. Accordingly, elections officials should exercise their best efforts to understand and respond to individual requests for assistance, however communicated. State administrative law provides that an election official may prompt the voter, where appropriate.⁵

An election official may pose "yes" or "no" questions, may allow the voter to point out the person from whom he or she wishes to receive assistance, or may use the Voter Assistance Section of the *Station Guide* as a visual tool to ensure that voters are enabled to communicate their request for assistance. In many cases, a voter in need of assistance will be accompanied by another individual. However, unless the voter requests the assistance of the accompanying individual, that individual is not entitled to assist the voter. The voter may instead request assistance from election judges or an election assistant.⁶

Illiteracy is a statutory basis for voter assistance. Illiteracy should be understood as the inability to read, write, or speak in English. Elections officials should make every effort to accommodate voters who are illiterate and who may seek assistance on that basis.

Election officials must ensure that voters are afforded appropriate assistance. However, they also have a responsibility to ensure that a voter's decisions are not coerced.⁷ If, after the election official has provided the voter every opportunity to request assistance by whatever manner the voter is able to communicate, the voter does not communicate a request for assistance, it would be inappropriate for the election official to allow an individual to assist the voter.

Election officials should use common sense in the effort to determine whether the voter has requested assistance, bearing in mind that both state and federal law vest all qualified voters with the right to vote, including those suffering from paralysis, hearing loss, or vocal disabilities.

³ See 52 U.S.C. § 10508; see also G.S. § 163-166.8(a)(2).

⁴ G.S. §§ 163-166.7(a) and 163-166.8(b).

⁵ See 08 N.C.A.C. 10B.0103

⁶ The chief judge, one of the judges, or one of the assistants may provide aid to the voter if so requested, if the election official is not the voter's employer, officer in the voter's union, or an agent of that employer or union. G.S. §§ 163-166.8(b).

⁷ See generally G.S. § 163-273.

Voter Assistance and Questions about Ballot Content

It is the duty of election officials to provide voters with any technical information the voter requests regarding ballot items. Technical information is limited to information necessary to allow the voter to mark his or her ballot. No election official may provide opinions, interpretations, or summaries of ballot items. No election official may provide information regarding the positions of candidates or otherwise point out which candidates may support particular policy positions.

The person assisting a voter is permitted to enter the voting booth with the voter. That assistant cannot, however, attempt to persuade or induce the voter to vote in a particular way and is prohibited from taking notes or otherwise documenting what occurs in the voting booth. The assistant is prohibited from revealing how the voter marked his or her ballot (unless the assistant is required to testify in a judicial proceeding about election law violations).⁸

Curbside Voting

Voters who are unable to enter the voting place are permitted to vote curbside. Curbside voting takes place in a vehicle in a process overseen by an elections official. A curbside voter is entitled to the same level of assistance, privacy, and instruction provided to voters within the polling place. For purposes of establishing a 50' buffer zone for electioneering activity, the vehicle is considered the voting enclosure.

Handling Difficult Circumstances

Voter assistance is ordinarily a straightforward, uneventful process. The laws allowing voters to request assistance are safeguards to ensure that eligible voters are able to cast a ballot without undue hardship or difficulty. Difficult circumstances may occasionally arise. When addressing unusual challenges, elections officials should make every effort to ensure qualified voters are permitted to exercise their constitutional right to vote without undue burden or unnecessary probing into the nature of a voter's disability. No rigid rule will apply to all circumstances; the system relies on the exercise of good judgement by elections officials throughout early voting and on Election Day.

State law does not limit the number of voters a person may assist in the course of a given day. If the person assisting is not the voter's near relative, however, elections officials must follow ordinary procedures to ensure that in each instance (1) the voter is eligible to receive assistance due to disability, and (2) the assistant is not the voter's employer, officer in the voter's union, or an agent of that employer or union. If an official has a well-founded reason to believe that he or she is witnessing a concerted effort to defy the laws governing assistance, the official should document the incident and inform the chief judge.

What is the proper conduct in the voting booth on the part of the person providing assistance?

G.S. § 163-166.8(c)(1) provides that the person providing assistance "shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way." The task of the precinct official is to satisfy himself or herself that the voter has the capacity to communicate the voter's choices to the person rendering assistance. By this point, the voter has met the minimum communication standards to identify himself or herself, to ask for assistance and to identify the person to provide assistance. Therefore, it is most likely that the precinct official will conclude that the voter should be permitted to vote with the

⁸ G.S. § 163-166.8(c)

assistance of the identified individual. That individual is then bound by law to mark the ballot according to the voter's wishes.

What happens if another voter or an observer believes that precinct officials have permitted an individual who does not meet the minimum communication standards outlined above to vote with assistance?

The voter or observer should express those concerns to the chief judge or designated election official⁹. If the response of the election official is unsatisfactory, the voter or observer may call the county election's director. Ultimately, the voter or observer may file an election protest with the county board of elections under 08 NCAC Chapter 2, or file a charge against the precinct officials with the State Board of Elections under 08 NCAC Chapter 3.

Again, no infallible test exists for determining whether a voter with severe disabilities has sufficient capacity to state his or her name and address, properly request assistance, properly identify the person to render the requested assistance, and properly communicate voting choices to that person. Therefore, there may be occasions when a voter who actually falls short of the needed capacity will be permitted to vote. That consequence is preferable to the alternative consequence of inappropriately disenfranchising voters merely because of their communication shortcomings. In the absence of compelling evidence of systematic fraud, this imperfect outcome is simply one with which we must live.

The law does not contemplate that the person providing assistance to a voter will vote in lieu of the voter or vote for choices not agreed to be those of the voter being assisted. Nor does the law contemplate that precinct officials or any other election officials are capable of making a medical assessment of a voter's capabilities. We must rely on the judgment of precinct officials to discern whether the voter is being assisted properly. Precinct officials have sworn to conduct the election without fear or favor and to consistently apply the same standards to all voters who present to vote. The bottom line is that a person providing assistance may not usurp the voter's right to vote and the voter must be able to participate personally in some fashion in the voting act attributed to the voter. As noted earlier, the person providing assistance may not memorialize what occurs in the voting booth and may not reveal how the person voted.

What happens if it appears that a systematic pattern of disregard for the standards outlined above is occurring?

If an elections official notices what appears to be a systematic disregard for the standards described in this memorandum, a designated election official should complete an incident report and contact the affected county board of elections to determine what action is needed and appropriate.

When evaluating a circumstance to determine whether standards are being violated, election officials shall bear in mind that there are no legal restrictions on the number of times a person can assist different voters as long as those voters qualify for that assistance and proper procedures are followed.

Finally, election officials shall in all cases avoid embarrassing a voter who makes a request for assistance.

⁹ The designated election official is the election official in charge at a one-stop early voting location.

Script for Voter Assistance

To ensure compliance with the law and uniformity across counties, election officials should use the script provided below when a voter is accompanied by someone who is providing assistance.

If a voter is accompanied by someone who appears to be a voter assistant, follow this script to determine who may assist the voter. Do NOT ask the voter to identify or explain the nature of his or her disability. As explained above, not all voters are able to communicate their preferences verbally. It is appropriate to modify this script in such situations and to accept a written response, nod, or other affirmative agreement from the voter.

1. Ask the voter: “Is this person here to assist you?”
 - a. If YES, go to #2. Flip to Voter Assistance Tab, page 2, in Station Guide.
 - b. If NO, instruct the person that they need to wait outside the voting enclosure.
2. Ask the voter: “Is this person a near relative?” Point to page 2 of the Station Guide.
 - a. If YES, the voter may receive assistance. No further information is needed.
 - b. If NO, go to #3. Flip to Voter Assistance Tab, page 1, in Station Guide.
3. Say: “A voter who needs assistance because the voter is blind, disabled, or unable to read, speak, or write English may receive assistance from a person of the voter’s choice. Do you need assistance for one of these reasons?” Point to page 1 of the Station Guide.
 - a. If YES, go to #4.
 - b. If NO, the voter is *not* entitled to receive assistance from someone who is not a near relative. If requested by the voter, an assistant, judge, or chief judge may assist the voter.
4. Ask the voter: “Is this person your employer, employer’s agent, officer of your union, or agent of your union?”
 - a. If YES, the person *may not* assist the voter. The voter may select someone else to assist him or her. If requested by the voter, an assistant, judge, or chief judge may assist the voter.
 - b. If NO, the voter may receive assistance. No further information is needed.

If you notice suspicious activity, report the activity to the chief judge and fill out an incident report.

The script is also provided as an attachment to this memo to be duplicated and included with voting site materials at both one-stop early voting and at precincts on Election Day.